IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

Crl.MC.No. 3626 of 2006()

C.C.NO.193/03 BEFORE THE JFCM-I, CHERTHALA.

PETITIONER: ACCUSED

V.K.SURESHKUMAR,
AGED 38, S/O.V.K.VELAYUDHAN,
17/1146, SASTHA ROAD, PUTHIYARA P.O.,
KOZHIKODE.

BY ADV. SRI.P.A.MOHAMMED SHAH

RESPONDENTS: STATE AND COMPLAINANT
---

1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. N.M.MINERALS INDIA PVT. LTD.,
MANNOOTHY, THRISSUR,
REP. BY K.N.GUNASEELAN, KUTHARASERY NIKARTHIL,
VAYALAR P.O., CHERTHALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3626 OF 2006

Dated this the 4th day of January, 2007

ORDER

The petitioner faces indictment in a prosecution initiated on the basis of a private complaint filed by the 2nd respondent. In the private complaint it was alleged that the petitioner had committed the offences punishable under Sec.138 of the N.I. Act and Sec.420 of the IPC. It is submitted, at the Bar, that the learned Magistrate initially took cognizance of the offence punishable under Sec.420 of the IPC. Later, it was altered and the trial proceeded as if the offence alleged against the petitioner is one under Sec.138 of the N.I. Act. Evidence was adduced. In the course of the evidence, it was realised that the petitioner was not the account holder or the one who signed in the cheque. At that stage, the learned Magistrate altered the charge again and chose to proceed under Sec.420 of the IPC. The charges were framed against the accused under Sec.420 of the IPC. Annexure-E is the charge framed by the learned Magistrate and the crux of the allegation is that:

> "'you' (the accused) issued a cheque dated 24/9/01 to the complainant to induce him to believe that the cheque is drawn from your account and that later from the evidence it is revealed that the cheque is not drawn from the account of the accused, thus induced the complainant to deliver the mineral water and cheated the complainant."

2. In the complaint, the crux of the allegation is that towards the price of mineral water supplied by the complainant to the accused, a total amount of Rs.1,98,617/- was due. An amount of Rs.1,30,270/- had been paid and discharged towards the balance amount. The cheque for Rs.68,347/- was issued. That cheque, when presented, was dishonoured by the bank on the ground of insufficiency of funds and on the further ground that the payment had been stopped. Notice of demand was later issued. It allegedly did not evoke any response.

3. The complainant, in these circumstances, alleged that the petitioner had committed the offences punishable under Sec.138 of the N.I. Act and Sec.420 of the IPC. According to him, when the cheque was given, it was assured that if the same

is presented, the amount can be realised and the liability can be discharged. With the knowledge that it shall not be honoured the cheque was issued, it is contended.

4. The complainant has no case now that an offence under Sec.138 of the N.I. Act has been committed by the petitioner and it is hence not necessary to go into that aspect in this Crl.M.C.

5. How is the offence under Sec.420 of the IPC made out? There is no dispute and the evidence of the defence witness - D.W.1 makes it clear that the cheque is drawn on an account maintained by a proprietary concern of which the father of the accused is the proprietor. Admittedly, the cheque is issued for the discharge of the liability of the said proprietary concern though there is an allegation that the petitioner was manging the affairs of the said concern. I have been taken through the evidence. The very specific evidence is that the accused had brought the cheque and delivered it to the complainant. There is no whisper of an allegation either in the complaint or in the evidence that the accused represented that the cheque was signed by him or that the cheque is drawn on an account maintained by him.

6. Thus, what follows from the materials available is that

amounts were due to the complainant from the proprietary concern of which the father of the petitioner was the proprietor. The petitioner – his son was allegedly managing the affairs of the said concern. Towards the liability of the said proprietary concern, the petitioner had brought a cheque and delivered it to the complainant. That cheque was dishonoured. The petitioner is not the drawer of the cheque and obviously realising that no allegation under Sec.138 of the N.I. Act is now pressed against the petitioner. Dishonour of a cheque issued for the discharge of a liability ipso facto cannot certainly attract a charge under Sec.420 of the IPC unless it can be shown that any false representation was made and the complainant was persuaded to do or omit to do something on the basis of such false representations. In the instant case there is no allegation that any false representation was made by the petitioner to the complainant. The mere fact that he who was managing the affairs of the proprietary concern of which his father is the proprietor handed over a cheque issued by his father for the discharge of the liability of the said concern and the said cheque was later dishonoured is certainly not a sufficient reason to attract culpability under Sec.420 of the IPC. I am, in these

circumstances, satisfied that the charge levelled against the petitioner under Sec.420 of the IPC has no legs to stand on. Permitting continuance of the proceedings, I am satisfied, would be a transparent case of abuse of process of court. The same would be totally unjustified also. I am, in these circumstances, satisfied that the continuance of the proceedings against the petitioner cannot be permitted and the powers under Sec.482 of the Cr.P.C. deserve to be invoked to prematurely terminate the proceedings.

7. In the result:

(a) This Crl.M.C. is allowed.

(b) Further proceedings in C.C.No.193/03 before the Judicial Magistrate of the First Class-I, Cherthala, is hereby quashed.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge